

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BRUNSWICK GMBH, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOWLING SWITZERLAND, INC., )  
 )  
 Defendant. )

Case No.

0 7 4 7 1

FILED  
CLERK U.S. DISTRICT COURT  
DISTRICT OF DELAWARE  
2007 JUL 30 PM 4:30

**COMPLAINT**

Brunswick GMBH ("Plaintiff"), by and through its undersigned attorneys, as and for its complaint (the "Complaint") against Bowling Switzerland, Inc. ("Defendant"), respectfully states as follows:

**PARTIES**

1. Plaintiff is a German corporation with a principal place of business in Eschborn, Germany.
2. Defendant is a Delaware corporation with a principal place of business in Nyon, Switzerland.
3. Defendant's registered agent for purposes of service of process is The Corporation Trust Company (a/k/a CT Corporation Systems), which is located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

**JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), in that this is a civil action where the matter in controversy exceeds the sum or

value of \$75,000, exclusive of interest and costs, and is between a citizen of a State and a citizen or subject of a foreign state.

5. Venue is proper in this Court under 28 U.S.C. § 1391(a)(1), in that Defendant resides in this judicial district or, alternatively, under 28 U.S.C. § 1391(a)(3) in that Defendant is subject to personal jurisdiction in this judicial district.

### **BACKGROUND**

6. Plaintiff is in the business of manufacturing and selling equipment for bowling centers.

7. Defendant owns and operates a number of bowling centers throughout Switzerland.

8. Prior to December 31, 2005, Defendant had purchased certain bowling equipment from Plaintiff or one of its wholly owned subsidiaries.

9. On or about May 5, 2006, Plaintiff sent a letter to Defendant advising it that Plaintiff's books of account disclosed a balance of 272,486.58€ (Euros) owed to it by Defendant as of December 31, 2005, and requesting that Defendant confirm the accuracy of this balance. A true and correct copy of this May 5, 2006 letter (the "May 5th Letter") is attached hereto as Exhibit A.

10. Defendant confirmed the accuracy of the 272,486.58€ (Euros) balance it owed to Plaintiff as of December 31, 2005 and countersigned Plaintiff's May 5, 2006 letter.

11. On or about February 23, 2006, Defendant made a payment of 19,463.33€ (Euros) to Plaintiff, leaving a balance 253,023.25€ (Euros) owed to Plaintiff.

12. Between February 23, 2006 and June 7, 2006, the parties had various discussions about Defendant's purchase of bowling equipment and agreed that Defendant would satisfy the outstanding balance it owed Plaintiff according to the following payment schedule:

<u>Installment Amount</u>	<u>Date</u>
5,000€ (Euros)	May 2006
10,000€ (Euros)	June 2006
10,000€ (Euros)	July 2006
10,000€ (Euros)	August 2006
30,000€ (Euros)	September 2006
30,000€ (Euros)	October 2006
30,000€ (Euros)	November 2006
109,000€ (Euros)	December 25, 2006

(the "Payment Schedule"). The parties further agreed that Defendant's order for 272 "new chair seats" would be cancelled and that its balance owed to Plaintiff would be credited by 19,023.25€ (Euros) if and when Defendant satisfied the Payment Schedule.

13. In exchange and consideration for the Payment Schedule and the 19,023.25€ (Euros) credit to the balance Defendant owed to Plaintiff, Defendant agreed not to sue and fully released Plaintiff and its subsidiaries, affiliates and other related entities from any and all claims whatsoever (along with the Payment Schedule and 19,023.25€ (Euros) credit, the "Payment Agreement")

14. Plaintiff memorialized the Payment Agreement in a letter dated June 7, 2006, which letter Defendant executed and returned to Plaintiff. A true and correct copy of that June 7, 2006 letter (the "June 7th Letter") is attached hereto as Exhibit B.

15. As of the date of this Complaint, Defendant has paid only 17,000€ (Euros) of the Payment Schedule, leaving a balance of 217,000€ (Euros) owed to Plaintiff.

16. On or about December 8, 2006, Plaintiff, through its Swiss counsel, sent a letter to Defendant demanding payment of the outstanding balance owed to Plaintiff under the Payment Agreement and reminding Defendant that, in accordance with the Payment Agreement, the credit of 19,463.33€ (Euros) would be applied to this balance only if Defendant paid the total amount due under the Payment Schedule by December 25, 2006.

**COUNT I**  
**(Breach of Contract)**

17. Plaintiff restates paragraphs 1 through 16 of this Complaint as though fully set forth herein.

18. The Payment Agreement is a valid and enforceable contract between Plaintiff and Defendant, entered into for good and valuable consideration.

19. Plaintiff has satisfied all of its obligations under and conditions precedent to enforcing the Payment Agreement against Defendant.

20. Defendant has paid Plaintiff no more than 17,000€ (Euros) in connection with the Payment Agreement.

21. Defendant is therefore in breach of the Payment Agreement.

22. As a result thereof, Plaintiff has incurred damages in the amount of 236,023.25€ (Euros).

WHEREFORE, Plaintiff Brunswick GMBH prays for judgment in its favor and against Defendant Bowling Switzerland, Inc. on Count I of the Complaint in the amount of 236,023.25€ (Euros) plus pre- and post-judgment interest and costs, and for any other relief this Court deems just.

**COUNT II**  
**(Account Stated)**

23. Plaintiff restates paragraphs 17 through 22 of this Complaint as though fully set forth herein.

24. Pursuant to the May 5th Letter and the June 7th Letter, the parties agreed that all of the items stated in Plaintiff's account are true (the "Account Stated Agreement").

25. The parties reached the Account Stated Agreement after the creation of Defendant's underlying debt to Plaintiff was created.

26. The parties to the Account Stated Agreement are the same as the parties to the underlying transactions.

27. Accordingly, based on the past consideration of the pre-existing debt, Plaintiff is entitled to judgment in its favor and against Defendant for account stated.

WHEREFORE, Plaintiff BRUNSWICK GMBH prays for judgment in its favor and against Defendant BOWLING SWITZERLAND, INC. on Count II of the Complaint in the amount of 236,023.25€ (Euros) plus pre- and post-judgment interest and costs, and for any other relief this Court deems just.

July 30, 2007  
Wilmington, Delaware

Respectfully submitted,

WILLIAM D. SULLIVAN, LLC

A handwritten signature in black ink, appearing to read 'William D. Sullivan', written over a horizontal line.

William D. Sullivan (2820)  
Elihu E. Allinson, III (3476)  
4 East 8th Street, Suite 400  
Wilmington, DE 19801  
Tel: (302) 428-8191  
Fax: (302) 428-8195

-- and --

David J. Fischer  
David P. Vallas  
WILDMAN, HARROLD, ALLEN & DIXON LLP  
225 West Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
Tel: (312) 201.2000  
Fax: (312) 201.2555

**Exhibit A**

14. JUN. 2006 12:27

BOWL SWI

BOWL SWI

**Brunswick**

**Bowling & Billiards International**

BRUNSWICK GMBH \* Postfach 5128 \* D-65726 Eschborn

D-65760 Eschborn

Bowling Switzerland Inc.  
Route de Saint-Cergue, 303  
CH - 1260 Nyon

Ginnheimerstr. 6  
Phone: + 49 6196 4727-46  
Fax: + 49 6196 4727-59  
email: Mandy.Seller@brunbowl.com

Suisse

May 05, 2006

Audit of our Financial Statements  
Confirmation of Balances as of December 31, 2005 (only for purposes of the year end audit)

To Whom It May Concern:

As of the above date, our books of account disclose a balance of

EUR 272.486,58 in our favor

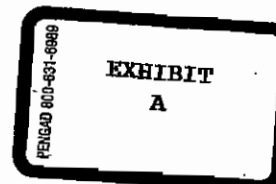
We request you to check the accuracy of these balances and send the results to our auditors using the included stamped addressed envelope:

Ernst & Young AG  
Wirtschaftsprüfungsgesellschaft  
c/o Ms. Angelika Rosenbaum  
Mergenthalerallee 10-12  
65760 Eschborn

Sincerely yours,  
Brunswick GmbH  
Ginnheimer Strasse 6  
65760 Eschborn, Germany  
Tel: + 49 6196 - 4727 70  
Mandy Seller - 47 27 59  
Financial Accountant

We confirm [ ] / dispute [ ] the disclosed balances.  
Deviations are explained on the attachment.

Bowling Switzerland Inc.  
Route de Saint-Cergue 303  
1260 Nyon, Suisse  
Tel. 022 994 35 76 - Fax 022 994 35 55





**Exhibit B**

14.JUN.2006 12:27

BOWL SWI

A

N0038

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BOWL SWI

7 June 2006

*Via Facsimile*

Giuseppe Avolio  
Bowling Switzerland Inc.  
Route de Saint-Cergue 303  
1260 Nyon - Switzerland

Fax: +41 22 994 3585

Dear Giuseppe:

This letter confirms our various discussions about your purchase of Brunswick bowling equipment and the outstanding purchase price.

As you know, Bowling Switzerland has an outstanding debt to Brunswick of 253,023.25€, after your last payment of 19,463.33€ on 23 Feb 2006. You've agreed to pay Brunswick in full with monthly installments, until the debt is repaid in December 2006. Brunswick had agreed to supply you with 234 new chair seats for the bowling center "La Praille" in Switzerland, which you already received, and additional 272 new chair seats for the other centers in Sévaz, Munteller and Château d' Oex. You've now said that you do not need the additional 272 chairs, and we have agreed instead to provide you with a credit of 19,023.25€ against your outstanding debt to Brunswick (reducing your debt to 234,000.00€).

*We will credit this amount against your monthly debt payment in December 2006. This credit is contingent upon Brunswick's receipt of payment in full on the outstanding debt.*

*As per your proposal, the payment schedule of 8 installments will, therefore, be as follows:*

- May 2006, one installment of 5,000.00€, (received on June 06)
- June 2006, one installment of 10,000.00€,
- July 2006, one installment of 10,000.00€,
- August 2006, one installment of 10,000.00€,
- September 2006, one installment of 30,000.00€,
- October 2006, one installment of 30,000.00€,
- November 2006, one installment of 30,000.00€,
- a final installment no later than December 25, 2006 of 109,000.00€.

Finally, as we discussed, there is no current plan by Brunswick to assign an exclusive distributor for the territory of Switzerland.

EXHIBIT  
B

PENALTY 800-631-6883

14.JUN.2006 12:27

BOWL SWI

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BOWL SWI

In exchange for this compromise, Bowling Switzerland, Inc., on its behalf and on behalf of its successors and assigns, agrees not to sue and fully releases and discharges Brunswick Bowling & Billiards Corporation, its parents, subsidiaries and affiliates, past and present, as well as their trustees, directors, officers, agents, attorneys, insurers, employees, members, stockholders, representatives, assigns and successors, past and present with respect to and from any claims, demands, rights, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected and whether or not concealed or hidden (collectively, "Claims"), which have arisen on or before the date of execution of this release.

Please feel free to contact me with any questions. I look forward to working with you in the future.

Sincerely,

Andrea Bisi  
Modernization Sales Manager  
Europe, Middle East and Africa

Acknowledged and Agreed by  
Bowling Switzerland, Inc.

  
Bowling Switzerland, Inc.  
Route de Saint-Cergue 303  
1260 Nyon / Suisse  
By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Tel. 022 994 35 75 - Fax 022 994 35 85

07-471

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b>  <b>(b)</b> County of Residence of First Listed Plaintiff <u>Eschborn, Germany</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) <u>William D. Sullivan, LLC</u> <u>WILM, DE 19899</u> <u>4 E. 8th St., Ste 400</u> <u>302 428 8191</u>			<b>DEFENDANTS</b>  County of Residence of First Listed Defendant <u>New Castle</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)																										
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)			<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)  <table style="width:100%; border: none;"> <tr> <td style="width: 33%; border: none;">Citizen of This State</td> <td style="width: 10%; border: none; text-align: center;">PTF</td> <td style="width: 10%; border: none; text-align: center;">DEF</td> <td style="width: 33%; border: none;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%; border: none; text-align: center;">PTF</td> <td style="width: 10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;"></td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business In Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>			Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF		<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																								
<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)																													
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defandent Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act																									
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition																									
<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Raeketer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes																											
<b>V. ORIGIN</b> (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																													
<b>VI. CAUSE OF ACTION</b> Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. § 1332(a)(2)</u> Brief description of cause: <u>breach of contract; amount stated</u>																													
<b>VII. REQUESTED IN COMPLAINT:</b> <input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ <u>253,023.25 euros plus costs + interest</u> CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																													
<b>VIII. RELATED CASE(S) IF ANY</b> (See instructions): <u>N/A</u> JUDGE _____ DOCKET NUMBER _____																													
DATE <u>July 30, 2007</u> SIGNATURE OF ATTORNEY OF RECORD <u>[Signature]</u>																													
FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____																													

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

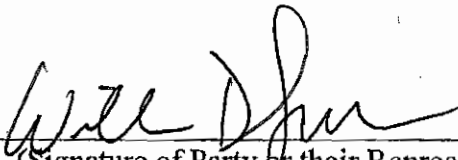
Civil Action No. 07-471

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

7/30/07  
(Date forms issued)

  
(Signature of Party or their Representative)

Will D. Jones  
(Printed name of Party or their Representative)

**Note: Completed receipt will be filed in the Civil Action**